

1 IN THE KENTUCKY PUBLIC SERVICE COMMISSION

2
3
4 IN RE: INVESTIGATION:

5 Case No. 2003-00433
6 AN ADJUSTMENT OF THE GAS AND ELECTRIC RATES
7 TERMS, AND CONDITIONS OF LOUISVILLE GAS AND
8 ELECTRIC COMPANY

9 and

10 Case No. 2003-00434
11 AN ADJUSTMENT OF THE ELECTRIC RATES, TERMS, AND
12 CONDITIONS OF KENTUCKY UTILITIES COMPANY

13 * * *

14
15 SWORN STATEMENT

16 OF

17 MICHAEL L. KURTZ

18 JULY 25, 2005

19
20
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I N D E X

Exhibit No. 1.....	6
(June 29, 2005 letter to Mike Kurtz from Jonathan D. Goldberg)	
Exhibit No. 2.....	9
(Sign-in sheets for May 4, 2004, May 5, 2004 and May 6, 2004)	

R E Q U E S T S

Mr. Goldberg to the witness	14
(Dates of any meetings with LG&E/KU personnel)	

A P P E A R A N C E S

SPECIAL GENERAL COUNSEL TO THE PUBLIC SERVICE
COMMISSION:

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1 The sworn statement of MICHAEL L.
2 KURTZ, taken in the offices of the Public Service
3 Commission, 211 Sower Boulevard, Frankfort, Kentucky,
4 on Monday, the 25th day of July, 2005, at
5 approximately 11:00 a.m.

6
7 EXAMINATION

8
9 BY MR. GOLDBERG:

10 Q. All right, sir. Would you state your
11 name for me.

12 A. Michael L. Kurtz.

13 Q. All right, sir. And your business
14 address?

15 A. 1510 URS Center, Cincinnati, Ohio,
16 45202.

17 Q. All right, sir. And your occupation,
18 please?

19 A. Lawyer.

20 Q. And where are you a lawyer?

21 A. I'm licensed in Ohio, Kentucky,
22 Pennsylvania and Michigan.

23 Q. All right, sir. And what kind of law
24 do you practice?

25 A. Public utility regulatory law.

1 Q. And how long have you done that?

2 A. Since 1986.

3 Q. All right, sir. And do you practice
4 in a firm?

5 A. Practice in the firm of Boehm, Kurtz &
6 Lowry.

7 Q. And you are a partner in that firm?

8 A. Yes.

9 Q. And Mr. David Boehm is your partner.

10 A. Yes.

11 Q. Okay. I want to talk to you about
12 a -- two rate-making cases. The first one is case
13 No. 2003-0433, which you would probably refer to as
14 the LG&E rate-making case, and the other is case No.
15 2003-00434, which you would refer to as the Kentucky
16 Utilities case. With regard to those rate-making
17 cases, did you have a client or clients involved?

18 A. Yes. My firm represented Kentucky
19 Industrial Utility Customers.

20 Q. All right. For the record, would you
21 tell me what that is?

22 A. It's a trade group that intervenes at
23 the commission on behalf of large industrial
24 customers of the various utilities in Kentucky.

25 Q. All right, sir. Now, with regard to

1 the two rate-making cases, do you have a recollection
2 of when you first became aware of their being filed?

3 A. I believe I became aware of it in the
4 end of December 2003 when the company made -- I think
5 the case was filed December 29th, '03, and that's, I
6 believe, when I became aware of it.

7 Q. All right, sir. Were you sent a copy
8 of it by the company?

9 A. I think LG&E made the rounds and
10 came -- personally came and visited myself and my
11 partner, and I believe they said that they were
12 making the rounds with the other major players in the
13 case.

14 Q. All right, sir. Do you -- do I take
15 it you and your partner, Mr. Boehm, had represented
16 KIUC before the Kentucky Public Service Commission
17 before?

18 A. Yes. I've done it for 18 years, and
19 he's represented them for 25 years or thereabouts.

20 Q. Just for my edification, do you know
21 how long KIUC has been an organization?

22 A. Probably like about the 25 years that
23 I mentioned.

24 Q. All right, sir. Let me first show you
25 the letter that I sent you, and we're going to mark

1 that as an exhibit to this statement.

2 (DEPOSITION EXHIBIT NO. 1 PREVIOUSLY
3 MARKED)

4 Q. And simply stated, I sent this to you
5 to arrange for your statement and to explain what I
6 was doing, which is investigating various activity
7 with regard to the rate-making case, and specifically
8 ex parte contact between individuals and the PSC
9 staff and/or the PSC commissioners.

10 I have, as I indicated to you prior to
11 going on the record, taken the sign-in sheets which,
12 as you know, is the practice here at the PSC, to
13 determine who actually comes to the various
14 functions. And I am communicating to you that April
15 the 28th, 2004 was the first informal conference with
16 regard to this matter. I did not see your name or
17 Mr. Boehm's name on the sign-in sheets. Do you have
18 a recollection of having participated in an informal
19 conference --

20 A. It would have --

21 Q. -- in these two rate-making cases?

22 A. It would have been -- we certainly
23 would have been advised. We certainly would have
24 tried to attend. I don't remember if one of us did
25 attend. It's possible that we just didn't sign the

1 sign-in sheet because that is definitely the type of
2 thing we would have been in, as KIUC is -- and the
3 attorney general are considered generally to be the
4 two major players.

5 Q. All right, sir. Now, prior to --
6 again using April 28th, because that is the first
7 getting together of all the parties, did you have
8 opportunity to talk to KU or LG&E counsel about the
9 rate-making case? This is prior to April 28th, 2004?

10 A. Yes, yes.

11 Q. Okay. And do you believe you had
12 opportunity to talk to, in addition to LG&E and KU
13 counsel, the attorney general staff prior to
14 April 28, 2004?

15 A. Certainly had opportunity to, yes.

16 Q. Did you actually do that?

17 A. I don't remember. It wouldn't be
18 unusual if we did. Oftentimes, we'd coordinate with
19 the attorney general.

20 Q. Okay. What do you recall being the
21 issues involved with regard to these two rate-making
22 cases?

23 A. They were very complicated. There
24 were really five cases. There was the North American
25 Stainless complaint case that got rolled into these

1 two rate cases. There were two earnings sharing
2 mechanism cases where the companies had in place a
3 new temporary experimental type of rate-making called
4 earnings sharing that was intertwined with the
5 standard general base rate cases. So there were
6 really two ESM cases, two general rate cases,
7 electric.

8 Q. ESM standing for earnings sharing?

9 A. Earnings sharing mechanism. There
10 were the two electric cases. There was a North
11 American Stainless complaint case. They were
12 contesting what their new contract should look like.
13 And I believe there was a gas rate case as well.

14 Q. Do you believe that was LG&E or KU?

15 A. Definitely LG&E. KU does not have gas
16 operations.

17 Q. All right, sir.

18 A. So there were all those cases
19 combined.

20 Q. Do you believe they were all
21 consolidated prior to April 28, 2004?

22 A. Don't know.

23 Q. Your recollection is that at some
24 point along the line they were consolidated.

25 A. Yes.

1 (DEPOSITION EXHIBIT NO. 2 PREVIOUSLY
2 MARKED)

3 Q. Okay. Let me show you what is a
4 sign-in sheet for May the 4th. Do you see your name,
5 sir?

6 A. Yes.

7 Q. Okay. Do I take it, then, you recall
8 having appeared here at the Public Service Commission
9 and participated in the rate-making cases?

10 A. I certainly participated. I don't
11 know if I remember this particular meeting.

12 Q. All right, sir. And then I'm showing
13 you the sign-in sheets for the 5th. Do you find your
14 signature there?

15 A. Yes.

16 Q. And finally for the 6th. Do you see
17 your name there, sir?

18 A. Yes.

19 Q. Okay.

20 A. I see my partner signed my name for
21 me.

22 Q. All right. Now, armed with the
23 knowledge of having taken his statement, I presume
24 that you would agree with him that sometimes you
25 would appear upon behalf of KIUC, sometimes he would,

1 and then sometimes together.

2 A. Yes.

3 Q. Okay. Now, prior to April 28th, 2004,
4 do you have a recollection of having talked about
5 these two rate-making cases with any member of the
6 PSC staff?

7 A. Well, certainly none of the
8 commissioners. I certainly never spoke to any of the
9 commissioners about these cases at any time. The
10 commission staff, I don't recall exactly, but it
11 certainly would not have been unusual to contact the
12 commission's lawyer. So that could very well have
13 happened. I don't know if it did.

14 Q. All right. I take it you have no
15 present sense recollection of having had a
16 conversation with the PSC's lawyer prior to April 28,
17 2004.

18 A. Not specifically, but again, it could
19 very well have happened.

20 Q. All right. And what types of things,
21 if it indeed occurred, would you have discussed with
22 counsel for the PSC?

23 A. Typically procedural. Typically
24 procedural. That would be -- but I don't recall if
25 there were anything even in procedural conversations.

1 Q. Fair enough. Prior to April 28, 2004,
2 would you have had conversations, settlement or
3 otherwise, with persons from LG&E and KU?

4 A. Yes. They -- what they -- the process
5 that they used in this case, because it was so
6 complicated, so many different cases involved, and
7 big dollars as well -- they, I believe, made the
8 rounds with all the major parties. Met with KIUC,
9 myself and my partner on at least one time, probably
10 more. I believe they met with the attorney general.
11 I believe they met with various interveners to the
12 case to try to -- try to work out a negotiated
13 resolution. So we certainly met with LG&E and KU
14 prior to -- you say April 28th. I think it was prior
15 to that because I remember it was cold, but I don't
16 remember the exact dates.

17 Q. All right, sir.

18 A. It was early on in the process.

19 Q. You have a recollection of them having
20 come to your office at least on one occasion?

21 A. Yes, they did. And we also met them
22 in Northern Kentucky on one occasion as well.

23 Q. Okay.

24 A. I believe they came to our offices,
25 but I'm absolutely positive we met with them in

1 Northern Kentucky.

2 Q. All right. Any other than those two?

3 A. We met with them at the Embassy Suites
4 also, I think, in Lexington, right across from the
5 Griffin Gate. Sort of a middle place to meet in
6 their efforts to try to, you know, address the -- the
7 issues that were raised by the parties, which
8 probably would have occurred after we filed our
9 testimony and we stated what our issues were.

10 Q. And do you have a date that you can
11 refer to of when that would have occurred?

12 A. I don't have my calendar with me, but
13 it -- it's very possible it's in my calendar.

14 Q. I trust that would have been after the
15 beginning of the proceeding, meaning after April 28,
16 2004, of the first informal conference?

17 A. No. The beginning of the proceeding
18 is when they filed their case. I mean, they -- they
19 filed their case -- I don't remember if they filed
20 their case on December 28th, 29th, or if that was the
21 notice, the 30-day notice that they were going to
22 file. But once they filed their testimony, their
23 case is laid out. Typically the commission
24 establishes a schedule where there's two rounds of
25 discovery and then intervener and attorney general

1 testimony is due, and then our position is laid out,
2 and there was some more discovery and then a hearing.
3 So by April 28th the case was well under way. The
4 company's -- all their testimony was filed. There
5 were many, many -- there were rounds of discovery.
6 Not many, many. There were only a couple. And then
7 I wouldn't be surprised if our position was stated in
8 pretrial testimony as well.

9 Q. And you remember a conference with
10 LG&E/KU at around the time you filed your testimony.

11 A. I don't remember when we filed. If
12 you looked at the procedural schedule in the case, it
13 would say. The hearing in this case was late May, I
14 believe.

15 Q. Actually, 4, 5, 6 and then 12 was the
16 announcement.

17 A. Oh, 4, 5 and 6 were the hearing dates?
18 Oh, our testimony was filed well before April 28th,
19 then. At least a month before.

20 Q. Okay. Who attended those three
21 meetings, same people each time?

22 A. I can't recall from the company's
23 side, but my partner and I both attended. And then
24 various people from LG&E. Their lawyer, Kendrick
25 Riggs, the people who were running the case.

1 Probably Mike Beer, probably their accounting people,
2 Valerie something. Probably people like Kenneth
3 Blake or John Wolfram, they have a regulatory team in
4 charge of these cases.

5 Q. Anybody --

6 A. Probably Steve Seelye, their
7 outside -- their outside witness.

8 Q. Anybody besides LG&E/KU people in
9 these meetings?

10 A. Not at these particular meetings, no.
11 Like I say, I think LG&E was making the rounds and
12 meeting with all the major parties.

13 Q. Okay. Any way for you to fix on your
14 calendar when those days were?

15 A. Possibly. I didn't go back and check,
16 but I believe I have my 2004 calendar, and it would
17 probably be there.

18 Q. Could I ask you to do that for me?

19 A. And state your question?

20 Q. What I'm looking for is the date of
21 the three meetings that you've told me about with
22 KU/LG&E personnel.

23 A. Okay. And I -- with this
24 clarification, I'm not sure if there were three or
25 two or --

1 Q. However many you've got.

2 A. -- however many there were, but I will
3 look back on my calendar and try to get you those
4 dates.

5 Q. I'm sensing, just for frame of
6 reference, that you had -- they came to see you at
7 your office shortly after filing, that you remember
8 one in Northern Kentucky and one in Lexington.

9 A. Yes. And the one -- I think this is
10 the case where they came to our offices and announced
11 that they were filing. I think this is the case.
12 I'm not exactly sure about that. And if it was, that
13 was nothing more than we filed for a rate increase
14 and it was this many dollars. I think they had done
15 that before on a different case, but I'm not exactly
16 sure.

17 Q. All right, sir.

18 A. That would have been mostly just a
19 courtesy, a nonsubstantive courtesy.

20 Q. You could check your calendar for me
21 and just send me a letter at this address and tell me
22 what dates that you have, if you can find them. Go
23 ahead.

24 A. No. I was just going to ask for a
25 copy of your letter --

1 Q. Sure.

2 A. -- or your card so --

3 Q. I will get that to you.

4 A. That's fine.

5 Q. Do I take it, then, the only persons
6 who participated in those meetings were you,
7 Mr. Boehm and LG&E/KU personnel?

8 A. Yes.

9 Q. Okay. Did you have occasion at any
10 time after filing the rate-making case in December of
11 2003, to meet with the attorney general's personnel?

12 A. Yes.

13 Q. And who from the attorney general's
14 office did you meet with?

15 A. Betsy Blackford and/or Dennis Howard.

16 Q. Okay. And tell me what you recall of
17 your meetings with them.

18 A. Well, they were involved -- we were
19 involved in negotiations with the attorney general
20 and the company and I believe the staff to try to get
21 resolution of some of the issues. Like I say, we had
22 an earnings sharing mechanism case where there was
23 not all the interveners from the rate case. It was
24 just -- just LG&E/KU, the attorney general, KIUC I
25 believe were the only interveners. That case was

1 intertwined with the rate case, so we were trying to
2 settle that matter as well as the rate case.

3 I remember going down to the attorney
4 general's office on a Friday afternoon to meet with
5 LG&E/KU and the attorney general. And I remember at
6 that point the staff lawyer, Richard Raff, was called
7 by the cell -- he was not at the meeting, but we got
8 to the point where everyone, including the attorney
9 general, felt it was appropriate to call Mr. Raff,
10 and we did on his cell phone. This was in context of
11 the settlement negotiations of all the cases.

12 Q. And was the attorney general present
13 in the room?

14 A. Absolutely. In fact, we placed the
15 call from their conference room to Mr. Raff. I
16 believe -- I believe he was at Churchill Downs
17 attending the race right before the Kentucky Derby.
18 I believe that was a Friday afternoon we talked to
19 him. We were very close to settling all the cases,
20 and for some reason we all felt, including the
21 attorney general, that we needed to get a staff's
22 input. So I believe a call was placed to him from
23 the attorney general's office. I'm sure.

24 Q. Okay. So that I have a sense of it,
25 who was in the attorney general's office?

1 A. Probably -- probably Dennis Howard and
2 Betsy Blackford.

3 Q. And yourself.

4 A. Yes.

5 Q. LG&E and KU were not present?

6 A. Oh, they were there.

7 Q. They were all there.

8 A. Yes, yes.

9 Q. And do you recall who from LG&E and
10 KU?

11 A. No. It would be the normal cast of
12 characters.

13 Q. All right. Mr. Riggs?

14 A. Yes.

15 Q. And anybody else beside those three?

16 A. No. Well, other people from LG&E/KU,
17 their normal regulatory team, but no other parties.

18 Q. All right, sir. And call made to
19 Mr. Raff.

20 A. Yes.

21 Q. Anybody besides Mr. Raff from the PSC
22 participating in this discussion?

23 A. Not on that phone call, no.

24 Q. All right. And how long did the
25 conversation occur; do you recall?

1 A. With Mr. Raff -- we met -- I drove
2 down to Frankfort Friday afternoon to meet with the
3 attorney general and the companies. We were very
4 close to getting a resolution. I remember -- I don't
5 remember what the issue was, but there was one
6 sticking point issue. And Dennis Howard told
7 Kendrick, "Don't come down unless you're willing to
8 budge on that issue." And we all came on over. At
9 first the company didn't budge on that issue,
10 whatever it was. Eventually they were worn down and
11 they did make some concessions.

12 I think the phone call went out to
13 Mr. Raff to -- I don't know, to get his impression,
14 his opinions. We all felt it was appropriate to call
15 Richard at that time, and ultimately, as you know, of
16 course, the attorney general pulled out of the
17 settlement that we reached on revenue requirements.

18 Q. How long was Mr. Raff on the phone?

19 A. Probably ten minutes, fifteen minutes.

20 Q. All right, sir. And do you have a
21 recollection of the conversation as it involved
22 Mr. Raff? If you don't, you don't.

23 A. It was involved with the rate-making
24 aspects of the case. And this case was also
25 complicated by the fact that I believe there was an

1 environmental surcharge issue intertwined in all
2 these cases involving KU and the appropriate
3 rate-making for the power contract that it has with
4 Owensboro Municipal Utilities and how that would be
5 factored into the rate case versus the environmental
6 surcharge. And I think that could have been one of
7 the issues discussed that afternoon at the attorney
8 general's office.

9 Q. All right, sir. Do you have a
10 recollection of that being the day before Derby?

11 A. I'm pretty sure of that. I'm pretty
12 sure of that because I don't think Richard Raff,
13 who -- typically goes to the Derby or horse races in
14 general, but he was not in the office on Friday and
15 we reached him on his cell phone. I believe that's
16 where he was.

17 Q. All right. And do you know where the
18 attorney general was? Was he in his office?

19 A. I've only met the attorney general one
20 time at the commission, and I have no idea where
21 he -- where he personally was at this time.

22 Q. All right. Did he participate in the
23 conversation?

24 A. No.

25 Q. He did not. Just his staff.

1 A. Yes.

2 Q. Okay. Other than that particular
3 meeting, do you have a recollection of having met
4 with the attorney general's personnel other than as a
5 meeting of all the parties involved?

6 A. Oh, absolutely. Meeting in the sense
7 of phone calls.

8 Q. Phone calls and/or --

9 A. Absolutely. We had numerous calls
10 with Dennis Howard and Betsy Blackford about the
11 case, about their position versus the company's
12 position, where we could compromise, where he could
13 compromise, what -- where our case was strong, where
14 our case was weak, how we would resolve all of these
15 intertwined cases, these environmental surcharge
16 cases, the earnings sharing mechanism case, the gas
17 case, the two electric cases. And so there were a
18 lot of phone calls, as there would typically be on a
19 case of that complexity in any state in any
20 jurisdiction. And I've practiced in front of
21 probably 15 public utility commissions around the
22 country. That's absolutely standard.

23 Q. All right, sir. Just in terms of
24 ballparking the number, any way for you to do that
25 with the attorney general?

1 A. With the attorney general's lawyers,
2 Ms. Blackford and Mr. Howard, couldn't ballpark the
3 number. Well, I'll try to ballpark the number.
4 Probably in those -- in those hectic days right
5 before we had these marathon negotiation sessions at
6 the commission, probably a half dozen phone calls.

7 Q. Okay. Other than the ten-minute phone
8 call when Mr. Raff was presumably at the racetrack,
9 do you recall him participating in any other
10 conversations other than those where all parties were
11 present?

12 A. First of all, I don't remember or it
13 wouldn't be out of character if he was. Remember,
14 all parties -- in the rate case there were lots of --
15 pretty much anybody can intervene in a rate case.
16 The commission has very loose standards, as do all
17 commissions, and you get any number of very minor
18 parties. For a while there, there was an individual
19 out of Louisville, just a residential customer named
20 Robert Madison who would intervene and come to the
21 commission and watch as sort of a hobby. So he was a
22 rate payor, so he had standing, the commission ruled.
23 This rate case had department of -- Kentucky
24 Department of Energy, who fully participated in the
25 settlement talks at the commission but was in no way

1 part of the core settlement negotiations because they
2 didn't file revenue requirements testimony.

3 See, people have the right to state
4 their positions in pretrial testimony. And if they
5 don't testify on it, the presumption is that they
6 don't have a position on it. So these negotiations
7 probably early on were divided between core and
8 noncore participants.

9 Kroger Company was a core participant.
10 They filed testimony on revenue requirements and
11 other things and -- so -- but some of these -- these
12 secondary players -- I don't remember who it was.
13 There's probably -- for example, some of the low
14 income groups, Joe Childress and some of his clients,
15 they may not have participated in very many
16 conversations at all. They were -- and they probably
17 didn't file testimony to speak of either. So that's
18 the way these rate cases are -- are handled
19 everywhere that I'm -- that I practice.

20 Q. All right, sir. Going back to my
21 question, you do recall participating in what you
22 described as marathon negotiations, 3rd, 4th, 5th?

23 A. At the commission.

24 Q. At the commission.

25 A. Yes.

1 Q. Okay. And with regard to those
2 conversations, do you recall any sidebar
3 conversations with any member of the staff where
4 other -- all persons did not participate?

5 A. I'm sure there were. Sidebar in the
6 sense that we were there for three solid days and
7 into the nights. And the way those negotiations went
8 was all the rate payors, including staff typically,
9 would be on one side, and then the companies, the
10 utilities, would be isolated on the other side. And
11 there were oftentimes situations where the company
12 was asked to leave the room and all of the rate payor
13 entities, including staff, conferred about what would
14 be a reasonable counteroffer to what the utility was
15 proposing. The utility was isolated and off by
16 themselves, and it was typically all of the other
17 parties who sort of teamed up on the utilities, which
18 also is standard fair for the way these cases go all
19 around the country.

20 Q. All right. I may have misled you with
21 the use of the term "sidebar." I take it that this
22 was a negotiation amongst a group of people that was
23 fluid in nature but that ultimately all conversations
24 reported to the whole group as a function of the
25 negotiation.

1 A. Yes, absolutely. That's exactly the
2 way it -- it resembled a large bankruptcy settlement
3 process where there would be big meetings followed by
4 large spaces of time where people were conferring
5 with their clients and trying to work things out.
6 And in that context, I mean, you couldn't help
7 talking to someone from the staff, although this
8 staff is particularly close to the vest, particularly
9 tight-lipped and particularly very sensitive about
10 not communicating very much to anybody, far more
11 close to the vest than any other staff I've dealt
12 with. So to the extent that there were conversations
13 with staff, they were probably fairly limited.

14 Q. All right, sir. And I take it part of
15 this whole large process of negotiation with all the
16 parties.

17 A. Yes. It -- everybody who was a party
18 to the case was invited to these large settlement
19 negotiations. And like I say, it was pretty much
20 everybody against the utilities. The low income
21 people had their little pet issue which got resolved
22 in the settlement. The department -- Kentucky
23 Department of Energy had their energy conservation
24 pet issue that got resolved as part of the
25 settlement. They were in it for very limited

1 purposes, the parties that were sort of more global,
2 more KIUC, the attorney general, the staff and the
3 companies. The other parties were second tier and
4 had very limited understanding and very limited
5 issues.

6 Q. What was your sense of how many days
7 the negotiation took?

8 A. I'm going from these three sheets that
9 it was three days, and that sounds about right. Oh,
10 and North American Stainless was in there as well,
11 and they had -- they had their own particular issue,
12 and they had probably three or four lawyers at a time
13 in there.

14 Q. And when you say three days, 4th, 5th
15 and 6th, I take it?

16 A. I'm assuming that those are correct.

17 Q. All right, sir. The 12th is the date
18 that the settlement was announced. Do you have a
19 recollection of having been here at the Public
20 Service Commission?

21 A. Well, then, I am confused because I
22 remember we announced the settlement -- there were
23 two aspects of the settlement. There was revenue
24 requirements and then there was everything else.
25 Everyone, including the attorney general, agreed to

1 the "everything else" settlement, and that was
2 announced whenever it was announced. If it was
3 announced May 12, then the agreement was reached the
4 day before, would be my recollection.

5 There was a tentative agreement the
6 night before on revenue requirements, but then the
7 next morning the attorney general pulled out of the
8 deal. But my recollection was we negotiated -- we
9 clearly went to the hearing at the commission. There
10 was an announcement to the commissioners that maybe
11 it would be more productive if we all broke off and
12 started settlement talks rather than hold the
13 hearing. The commissioners agreed and we started
14 these marathon sessions. I thought that as a result
15 of those marathon sessions we stayed there until we
16 announced a deal on the nonrevenue requirements
17 aspects of the case. And then everybody except the
18 attorney general who agreed and then disagreed,
19 announced an agreement on the revenue requirements.
20 That's my recollection of how it occurred.

21 Q. All right. And you have a
22 recollection and memory of an announcement being made
23 by the parties that there was some form of settlement
24 on whatever issues were agreed to?

25 A. I believe so. There must have been.

1 Q. And do you have knowledge of whether
2 or not a more formal agreement was subsequently
3 submitted?

4 A. Oh, perhaps that was it. Maybe the
5 more formal agreement was issued on May 12th, but we
6 announced agreement I guess maybe the last of these
7 May dates.

8 Q. May 6th?

9 A. May 6th. That could have very well
10 been what happened.

11 Q. All right, sir. Tell me what you
12 recall about the process whereby the attorney general
13 you thought was in agreement on both issues and then
14 suddenly you were informed that he was not. When I
15 say "attorney general," I'm really talking about his
16 staff.

17 A. They agreed -- they agreed to the
18 nonrevenue requirements issue where they did very
19 well. They got their litigation position on many
20 issues on cost allocation. Then there was also
21 tentative agreement on revenue requirements. We'd
22 been back and forth and back and forth, and we all
23 reached a number that we thought was -- was fair.
24 And then the next morning we learned that the
25 attorney general himself had decided that the deal

1 wasn't good enough, apparently. And then we were
2 informed that they were out of everything except the
3 revenue requirements.

4 And by the way, I should add, the
5 biggest -- the biggest victim of that, so to speak,
6 was the utilities, because what happened to the
7 utilities is they went forward with their agreement
8 and gave the attorney general a free shot. In other
9 words, we had established a ceiling, an effective
10 ceiling that in reality the rate increase was not
11 going to be more than the announced revenue
12 requirements settlement. So the company was at risk
13 that it may go lower, but it certainly wasn't going
14 to go higher once it was publicly agreed to at that
15 number.

16 So the utilities gave the attorney
17 general a free shot to try to get -- to try to get a
18 lower revenue requirement. But, of course, the
19 attorney general was not successful because the
20 commission ultimately concluded that the revenue
21 requirement agreed to by everyone except the attorney
22 general was reasonable.

23 Q. And you say -- your use of the term
24 "revenue requirement," am I taking that as the
25 overall rate increase?

1 A. Yes.

2 Q. So to put it in a sort of vernacular,
3 the attorney general did not agree -- well, he agreed
4 and then disagreed subsequently to the amount of the
5 rate increase.

6 A. Yes.

7 Q. But he was at all times in agreement
8 with how the increase was to be divided up.

9 A. Yes.

10 Q. Okay.

11 A. Where -- we structured a settlement
12 where the attorney general got its litigation
13 position on that issue. Did as well as it could have
14 possibly done.

15 Q. All right, sir. Other than -- this is
16 you, Mike Kurtz personally. Other than the
17 10 minutes of phone conversation where other parties
18 were present with Mr. Raff, were you aware of any
19 other conversations between any of the parties with
20 PSC staff other than during this large negotiation
21 period?

22 A. Like I said at the beginning, it would
23 have been common to talk to the staff attorney about
24 procedural matters, how the case progressed and these
25 type of things. It would not be uncommon for

1 Mr. Howard or Ms. Blackford to pick up the phone and
2 call Mr. Raff about the same topics. So it's very
3 possible that I spoke to Mr. Raff about something
4 related to the case other than that one horse race
5 phone call. It's very possible. I don't remember.

6 Q. Okay. You simply have no
7 recollection.

8 A. Correct.

9 Q. All right. Now, let me ask you that
10 same question. Other than Mr. Raff, did you have any
11 conversations with any other member of the staff
12 other than at the joint negotiating session of all
13 the parties?

14 A. Not that I recall. I can say
15 categorically I never spoke to any of the
16 commissioners. And I'm fairly well certain I spoke
17 to no member of the staff, although that is a far
18 more rare occurrence that I would have a technical
19 accounting type of question where I'd pick up the
20 phone and call a staff person on that. I don't
21 recall if it happened during this rate case or not.
22 It would certainly -- if such a call occurred, it
23 would have been advert -- I mean, the attorney
24 general and KIUC are on the same side of revenue
25 requirements, of how big the rate increase should be.

1 We both want it to be as small as possible. So the
2 attorney general and all of the rate payors gang up,
3 so to speak, on the utility, who is the only party to
4 the room that wants the rate increase to be as large
5 as possible. Staff sides with the rate payors in an
6 effort to get the rate increase to be as low as
7 possible.

8 Q. Let me give you some names of some
9 individuals who are staff members and/or
10 commissioners and ask you a specific question,
11 whether you had any conversations with any of these
12 persons other than as part of the negotiation where
13 all parties were present.

14 Ms. Beth O'Donnell?

15 A. No.

16 Q. Okay. Chairman Mark David Goss?

17 A. No.

18 Q. Commissioner Williams, Ellen Williams?

19 A. No.

20 Q. Commissioner Marty Huelsman?

21 A. No. And I would just say about Ellen
22 Williams, I believe her sort of -- her first day or
23 confirmation --

24 Q. Reception?

25 A. Reception was on a Monday and the

1 hearing started on Tuesday. I didn't even make it to
2 the reception because I was preparing for the
3 hearing.

4 Q. Fair enough, sir. Commissioner Gary
5 Gillis?

6 A. No, not about this case. Was he even
7 on the commission at that time?

8 Q. He was phasing out. He did attend
9 some of the hearings.

10 A. Okay. The answer is no, did not talk
11 to him.

12 Q. All right. Mr. Tom Dorman, who was
13 the executive director and in transition.

14 A. No, that I -- not that I recall.

15 Q. Okay. Isaac Scott, member of the
16 staff?

17 A. Not that I recall.

18 Q. Bob Amato, who you may or may not
19 know?

20 A. Don't know him. Definitely did not
21 talk to. I do know who he is, but he's not the type
22 of person I would ever --

23 Q. Okay. Andrea Edwards.

24 A. Definitely not.

25 Q. Faud Sharifi?

1 A. Definitely not.

2 Q. Martha Morton?

3 A. Morton? Definitely not.

4 Q. Jeff Shaw?

5 A. Don't recall. I have spoken to Jeff
6 over the last 18 years on the phone, and I don't
7 remember what the cases were.

8 Q. You have no present sense recollection
9 of having talked to Mr. Shaw about these rate cases?

10 A. I do not know for certain.

11 Q. All right. And finally, I've been
12 asking you about you, Mike Kurtz, with regard to
13 these conversations. Do you know of any
14 conversations between the staff and/or the
15 commissioners and other parties not at a settlement
16 discussion?

17 A. I don't know.

18 Q. Okay. And nobody has made you aware
19 of any.

20 A. No, I certainly don't -- no, I don't
21 know.

22 MR. GOLDBERG: Fair enough. That's
23 all I have.

24 THE WITNESS: Okay.

25 MR. GOLDBERG: Appreciate it much.

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(STATEMENT CONCLUDED AT 11:45 A.M.)

* * *

1 STATE OF KENTUCKY) (
2) (SS:
3 COUNTY OF JEFFERSON) (
4

5 I, ELLEN L. COULTER, Notary Public,
6 State of Kentucky at Large, hereby certify that the
7 foregoing sworn statement was taken at the time and
8 place stated in the caption; that the appearances
9 were as set forth in the caption; that prior to
10 giving testimony the witness was first duly sworn by
11 me; that said testimony was taken down by me in
12 stenographic notes and thereafter reduced under my
13 supervision to the foregoing typewritten pages and
14 that said typewritten transcript is a true, accurate
15 and complete record of my stenographic notes so
16 taken.

17 I further certify that I am not
18 related by blood or marriage to any of the parties
19 hereto and that I have no interest in the outcome of
20 captioned case.

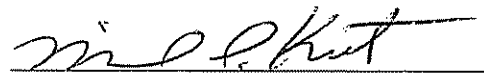
21 My commission as Notary Public expires
22 November 5, 2007.

23 Given under my hand this the 3rd
24 day of August, 2005, at Louisville, Kentucky.

25

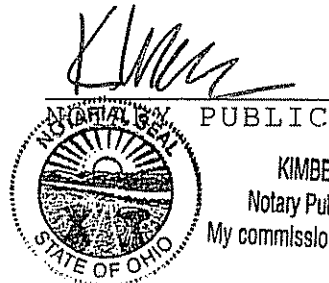

ELLEN L. COULTER
NOTARY PUBLIC

1 I, the undersigned, MIKE KURTZ, do hereby
2 certify that I have read the foregoing sworn
3 statement, and that, to the best of my knowledge,
4 said sworn statement is true and accurate, with the
5 exception of the corrections, if any, listed on the
6 errata sheet.

7
8 

9 MIKE KURTZ

10
11 Subscribed and sworn to before me this _____
12 day of Sept 29, 2005.



19 My commission expires _____
20
21
22
23
24
25

COULTER REPORTING, LLC
101 EAST KENTUCKY STREET, SUITE 200
LOUISVILLE, KY 40203

ERRATA SHEET

NAME MIKE KURTZ DATE OF DEPOSITION 7/25/05

After having read my deposition, I wish to make the following changes:

Page 14 Line 2
Change Kenneth to Kent
Reason for change _____

Page 22 Line 22
Change rate payor to ratepayer
Reason for change _____

Page 24 Line 8
Change rate payors to ratepayers
Reason for change _____

Page 29 Line 3
Change revenue requirements to non-revenue requirements
Reason for change _____

Page _____ Line _____
Change _____
Reason for change _____

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Reason for change _____

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Change _____
Reason for change _____

GOLDBERG & SIMPSON, PSC

June 29, 2005

Mike Kurtz
Boehm Kurtz & Lowry
26 East Seventh Street
Suite 2110 URS Center
Cincinnati, Ohio 45202

FRED M. GOLDBERG
JONATHAN D. GOLDBERG
MITCH CHARNEY
STEVEN A. GOODMAN
STEPHEN B. SMITH
CHARLES H. CASSIS
DAVID H. COOPER**
JAN M. WEST
SHERAT P. PORTER
K. GAIL RUSSELL
DAVID B. GRAY
MARK A. YUSSMAN
JERROLD K. FERCHIK**
WAYNE F. WILSON
STEPHANIE L. MORGAN-WHITE*
RICHARD L. TINSLEY
ARMANDO I. JUDAH
RICHARD T. FRANK
STEPHEN R. SOLOMON
J. MICHAEL WELLS
BRYAN C. PIERCE
STACEY A. HUSS
KEVIN P. WEIS
MATTHEW J. MARTINEZ
MATTHEW D. WATKINS*
AARON J. SILLETT
JENNIFER KAELEN LUIRS

OF COUNSEL
RONALD V. SIMPSON
D. HUNT ROUNSAVALL, JR.
CHRISTINA DRUMMOND DENNER

MARY A. MAPLE (1912-2003)

*ALSO ADMITTED OHIO
**ALSO ADMITTED INDIANA
*ALSO ADMITTED ALABAMA
*ALSO ADMITTED DISTRICT
OF COLUMBIA
*ALSO ADMITTED ILLINOIS

RE: Before the Public Service Commission in the Matter of:
Application of Louisville Gas and Electric Company for an
Adjustment of the Gas and Electric Rates, Terms and
Conditions; CASE NO. 2003-00433; and, In the Matter of:
Application of Kentucky Utilities Company for an
Adjustment of the Electric Rates, Terms and Conditions;
CASE NO. 2003-00434

Dear Mr. Kurtz:

The undersigned is special general counsel to the Public Service Commission ("PSC").

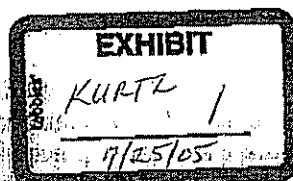
We are conducting a civil investigation on behalf of the PSC of potential ex parte communication(s) in the above-referenced case. We have identified you as a participant in the proceeding by analysis of the public record of this case. We will be seeking the cooperation of all the participants in this case, and would very much appreciate your assistance by giving a voluntary statement concerning the proceedings in this case. As I am sure you know, the PSC does possess the power to command your presence by subpoena. We trust and hope that will be unnecessary.

I estimate your statement will require only 30 to 45 minutes, and wish to take it at the office of the PSC in Frankfort or if you unavailable in person telephonically. Please notify my office by contacting Ms. Michaela Nowell of a time that will accommodate your schedule on July 25, 2005.

I would very much appreciate your prompt response, so that the investigation may be completed as soon as possible. If you have any questions, please do not hesitate to call upon me.

Respectfully,


Jonathan D. Goldberg



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DOWNTOWN
3000 NATIONAL CITY TOWER
101 SOUTH FIFTH STREET
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SUBURBAN
10600 TIMBERWOOD CIRCLE
SUITE 1
LOUISVILLE, KY 40233
502 326-0000
FAX: 502 326-0656
WWW.OSATTY.COM

Hearing Sign-In Sheet

Hearing:	LG+E/KU
Case Number:	2003-00433/2003-00434
Location:	HR#1
Today's Date:	5/4/04

NAME	COMPANY
Allyson Sturgeon	Counsel for LG+E/KU
Alex Comer	Counsel for LG+E/KU
Mike Kurtz	KILUC
John Wolfram	LG+E/KU
Paul Thompson	}
Chris Henneman	
Bertie Lockenill	
Robert R. [unclear]	"
Robert W. [unclear]	"
Kurt W. [unclear]	"
Walter Sales	"
John McCall	"
Don Wiggins	Concerned Citizens & Businessmen of Central Ky, Inc.
David A. McCormick	US Dept. of Defense or Federal Agencies
V. L. Stuffer	LG+E
BRAD RIVER	LG+E
HOWARD BUSH	LG+E
Dennis [unclear]	OAR
Hebert Bowman	FEWPO

EXHIBITKURTZ
7/25/05 2

Hearing Sign-In Sheet

Hearing: LG+E / KU
Case Number: 2003-00433 / 2003-00434
Location: HR#1
Today's Date: 5/4/04

NAME	COMPANY
Dave Sloan	Kiogen
Jay Brew	NAS
Rebecca Brangiers	KACA
Joe Despain	Provac
Martin Gidley	LG&E
Edward Gardner	LFUGG
Jack Burrell	COMMUNITY ACTION COUNCIL
Maiguel Sanchez	NAS
William Jones	NAS
Scott Douglas	Capital Link (NAS)
Geoff Young	Ky. Division of Energy
Chuck Burchell	NAS
Stephen Ceeley	WDRB-TV
Tim Skidmore	EPPC - OLS
Bob Kelly	MHNA + POWER
Ben Allen	Yunker + Associates
Joe Childers	KACA / CAC
Carl Weaver	AT Gen Otc

Hearing Sign-In Sheet

Hearing: .	LG+E/KU
Case Number:	2003-00433/2003-00434
Location:	HR#1
Today's Date:	5/4/04

NAME	COMPANY
Bobby Blythe	AAG
Robert Vinkler	OAG
Chris Wheeler	LG+E
Chip Krelling	"
Arti Markov	"
Mike Bess	"
DOT O'Brien	"
DAVID BOEHM	RUC
Frank E. ...	on a high LG+E/KU
Clay Munday	LG+E
(Pam ...)	LG+E
Pam ...	CJ
DAVID BARBONIS	LFUCG
Dr. ...	LG+E
John ...	Stand Energy
Pat McCann	NAS
Art ...	A O
Arvid ...	ATTY

Hearing Sign-In Sheet

Hearing:	LG+E / KU
Case Number:	2003-00433/2003-00434
Location:	HR 41
Today's Date:	5/4/04

NAME	COMPANY
Marlene Herrington	Court Reporter
David Freiberg	KU / LG+E
Valerie Smith	LG+E
Bill Wolf	Courier Journal
Keith Velade	MHNA
Jon Parkers	CAC
Carol Mink	WHAS TV
Forrest Clann	WHAS TV
NAT Adams	North American Stainless
Carla Wade	WTVQ
Charlie Watson	WTVQ
Russel Hudson	LG&E
Tom Prisco	DOD

Hearing Sign-In Sheet

Hearing:	LG+E/KU
Case Number:	2003-00433/2003-00434
Location:	HR#1
Today's Date:	5/5/04

NAME	COMPANY
David A. McCormick	DOD
Thomas J. Prisco	DOD
Iris Skidmore	EPAC
Mike Kurtz	KIUC
Carl Weaver	AG/ARAC
Monique Hemington	Court reporter
Chris Whelan	LG+E
Jim Keelby	"
Robert Hemker	AG
William H. Jones	NAS
Joe Childers	KACA/CAC
Jim Hildey	MHNA/POWER
Keith Velarde	MHNA
BRAD RIVER	LG+E/KU
Maiguel Sanchez	NAS
Robert Ramsey	LG+E
Robert Watt	LG+E
Walt Sales	LG+E

Hearing Sign-In Sheet

Hearing:	LG+E / KU
Case Number:	2003-00433 / 2003-00434
Location:	HR#1
Today's Date:	5/5/04

NAME	COMPANY
Allyson Sturgeon	Counsel for LG+E / KU
Greg Cornett	" " "
Howard Bush	LGE
Mark Beley	Ex-Renew Renewell
Frank Palmer	ONW LG+E / KU
Daniel Brown	Kroger
Martyn Galus	LGE
Rusty Hudson	LG+E
John Wolfson	LG+E / KU
DRIVER	"
DRIVER	"
A. B. B. K.	AT
Arnold	Carle
John Dosker	Stant Energy Corp.
Geoffrey Young	KY Division of Energy
Charles Freidant	LGE
Benny Sings	LGE
Justin (Fischer)	E.ON

Hearing Sign-In Sheet

Hearing:	LG+E/KU
Case Number:	2003-00433/2003-00434
Location:	HR#1
Today's Date:	5/5/04

NAME	COMPANY
Paul Thompson	LG+E
Tom Garice	Prime Group
Bob Carr	
Dennis Ward	OAG
Chay Mungler	LG+E
Chris Gilmeth	LG+E
Ken Ogilvie	LG+E
Robert A. Bowman	FZUPB
David A. McCormick	DOD
CHRIS HERMAN	UOE
Chay Mungler	"
Chris Whelan	LG+E
Chip Keeler	"
DAVE BARBER	LPUCG
Jay Brown	NAS
Paul Anderson	AG's Office
Bob Carr	
Betsy Blackford	OAG

Hearing Sign-In Sheet

Hearing: LGE/KU
Case Number: 2003-00433 + 2003-00434
Location: HR#1
Today's Date: 5/6/04

NAME	COMPANY
Kent Brann	LGE/KU
Robert Warr	LGE/KU
HOWARD BUSH	LGE/KU
David A. McCormick	DOD
Thomas J. Prisco	DOD
David Brann	KU/KU
Earl M. Palmer	AUS Consultants
Walter Sales	LGE/KU
Allyson Stinson	Counsel LGE/KU
Greg Cornett	" " "
Robert Rimmer	LGE
Brian Rives	LGE/KU
David Beckman	AIRC
Mike Kady	"
Mike Rives	LGE
Dennis Howard	AG
John Gell	LGE
Shane Seelye	LGE

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